



General Assembly

February Session, 2004

Amendment

LCO No. 4904

SB0047704904HDO

Offered by:

REP. FOX, 144th Dist.

REP. FARR, 19th Dist.

REP. BERGER, 73rd Dist.

SEN. COLAPIETRO, 31st Dist.

To: Senate Bill No. 477

File No. 171

Cal. No. 486

(As Amended by Senate Amendment Schedule "A")

"AN ACT CONCERNING CONSTRUCTION CONTRACTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 42-158i of the general statutes, as amended by
4 section 1 of public act 03-56, is repealed and the following is
5 substituted in lieu thereof (*Effective October 1, 2004*):

6 As used in sections 42-158i to 42-158n, inclusive, as amended, unless
7 the context otherwise requires:

8 (1) "Owner" means any individual, corporation, nonprofit
9 corporation, partnership, limited partnership, limited liability
10 company or other business entity that is the owner of record or lessee
11 of real property upon which [a commercial or industrial building]

12 construction, renovation or rehabilitation is to be or is being
13 [constructed, renovated or rehabilitated] performed pursuant to a
14 construction contract regarding such real property.

15 (2) "Construction contract" or "contract" means any contract for the
16 construction, renovation or rehabilitation in this state on or after
17 October 1, 1999, [of a commercial or industrial building, or for the
18 renovation or rehabilitation of a commercial or industrial building for
19 which a certificate of occupancy is required,] including any
20 improvements to real property that are associated with such
21 construction, renovation or rehabilitation, or any subcontract for [a
22 project associated with the] construction, renovation or rehabilitation
23 [of a commercial or industrial building] between an owner and a
24 contractor, or between a contractor and a subcontractor or
25 subcontractors, or between a subcontractor and any other
26 subcontractor. "Construction contract" or "contract" does not include
27 (A) any public works or other building contract entered into with this
28 state, the United States, any other state, and any municipality or other
29 political subdivision of this state or any other state, (B) a contract or
30 project funded or insured by the United States Department of Housing
31 and Urban Development, (C) a contract between an owner and a
32 contractor for an amount of twenty-five thousand dollars or less or a
33 subcontract which results from such a contract, or (D) a contract for a
34 building intended for residential occupancy containing four or less
35 units.

36 (3) "Retainage" means a sum withheld from progress payments to
37 the contractor or subcontractor, otherwise payable to a contractor or
38 subcontractor by an owner conditioned on substantial or final
39 completion of all work in accordance with the terms of a written or
40 verbal construction contract, but does not include any sum withheld
41 due to the contractor's or subcontractor's failure to comply with
42 construction plans and specifications.

43 Sec. 2. Section 42-158j of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective October 1, 2004*):

45 (a) [Unless otherwise agreed by the parties in the terms of a written
46 construction contract, each] Each construction contract shall contain
47 the following provisions: (1) A requirement that the owner pay any
48 amounts due any contractor, subcontractor or supplier in a direct
49 contractual relationship with the owner, whether for labor performed
50 or materials furnished, not later than [fifteen] thirty days after the date
51 any written request for payment has been made by such contractor,
52 subcontractor or supplier; (2) a requirement that the contractor pay
53 any amounts due any subcontractor or supplier, whether for labor
54 performed or materials furnished, not later than [fifteen] thirty days
55 after the date the contractor receives payment from the owner which
56 encompasses labor performed or materials furnished by such
57 subcontractor or supplier; and (3) a requirement that the contractor
58 shall include in each of its subcontracts a provision requiring each
59 subcontractor and supplier to pay any amounts due any of its
60 subcontractors or suppliers, whether for labor performed or materials
61 furnished, not later than [fifteen] thirty days after the date such
62 subcontractor or supplier receives a payment from the contractor
63 which encompasses labor performed or materials furnished by such
64 subcontractor or supplier.

65 (b) (1) If payment is not made by an owner in accordance with the
66 requirements of subdivision (1) of subsection (a) of this section or any
67 applicable construction contract, such contractor, subcontractor or
68 supplier shall set forth its claim against the owner through notice by
69 registered or certified mail.

70 (2) If payment is not made by a contractor in accordance with the
71 requirements of subdivision (2) of subsection (a) of this section or any
72 applicable construction contract, the subcontractor or supplier shall set
73 forth its claim against the contractor through notice by registered or
74 certified mail.

75 (3) If payment is not made by a subcontractor or supplier in
76 accordance with the provisions of subdivision (3) of subsection (a) of
77 this section, the subcontractor or supplier to whom money is owed

78 shall set forth its claim against the subcontractor or supplier who has
79 failed to comply with the provisions of said subdivision (3) through
80 notice by registered or certified mail.

81 (4) Ten days after the receipt of any notice specified in subdivisions
82 (1), (2) and (3) of this subsection, the owner, contractor, subcontractor
83 or supplier, as the case may be, shall be liable for interest on the
84 amount due and owing at the rate of one per cent per month. Such
85 interest shall accrue beginning on the date any such notice is received.
86 In addition, such owner, contractor, subcontractor or supplier, upon
87 written demand from the party providing such notice, shall be
88 required to place funds in the amount of the claim, plus such interest
89 of one per cent per month, in an interest-bearing escrow account in a
90 bank in this state, provided such owner, contractor, subcontractor or
91 supplier may refuse to place the funds in escrow on the grounds that
92 the party making such demand has not substantially performed the
93 work or supplied the materials according to the terms of the
94 construction contract. In the event that such owner, contractor,
95 subcontractor or supplier refuses to place such funds in escrow and
96 such owner, contractor, subcontractor or supplier is found to have
97 unreasonably withheld payment due a party providing such notice,
98 such owner, contractor, subcontractor or supplier shall be liable to the
99 party making demand for payment of such funds and for reasonable
100 attorneys' fees plus interest on the amount due and owing at the rate of
101 one per cent per month. In addition, any owner, contractor,
102 subcontractor or supplier who is found to have withheld payments to
103 a party providing such notice in bad faith shall be liable for ten per
104 cent damages.

105 (c) No payment may be withheld from a subcontractor or supplier
106 for work performed or materials furnished because of a dispute
107 between a contractor and another contractor, subcontractor or
108 supplier.

109 (d) This section shall not be construed to prohibit progress
110 payments prior to final payment of the contract and is applicable to all

111 subcontractors and suppliers for material or labor whether they have
112 contracted directly with the contractor or with some other
113 subcontractor on the work. Each owner that enters into a contract
114 under this section and fails or neglects to make payment to a
115 contractor for labor and materials supplied under a contract, as
116 required pursuant to this section, shall, upon demand of any person
117 who has not been paid by the contractor for such labor and materials
118 supplied in the performance of the work under the contract, promptly
119 pay the person for such labor or materials. Demand for payment shall
120 be served on the owner and a copy of each demand shall be sent to the
121 contractor by certified mail, return receipt requested to any address at
122 which the owner and contractor conduct business. If the owner fails to
123 make such payment, the person shall have a direct right of action
124 against the owner in the superior court for the judicial district in which
125 the project is located. The owner's obligations for direct payments to
126 the contractor, subcontractors or suppliers giving notice pursuant to
127 this section shall be limited to the amount owed to the contractor by
128 the owner for work performed under the contract at the date such
129 notice is provided."

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>